

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy
And Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote
Consistency in Methodology and Input
Assumptions in Commission Applications of
Short-run and Long-run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**MOTION OF THE COGENERATION ASSOCIATION OF CALIFORNIA AND
THE ENERGY PRODUCERS AND USERS COALITION TO ADJUST
JANUARY 2008 AVOIDED COST POSTING OF PACIFIC GAS AND
ELECTRIC COMPANY**

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March 3, 2008

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The Cogeneration Association of California (CAC)¹ and the Energy
Producers and Users Coalition (EPUC)² (collectively CAC/EPUC) move to
immediately adjust the January 2008 Avoided Cost Posting of Pacific Gas and

¹ CAC represents the combined heat and power and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company and Watson Cogeneration Company.

² EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: BP West Coast Products LLC, Chevron U.S.A. Inc., ConocoPhillips Company, Shell Oil Products US, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Valero Refining Company – California.

Electric Company (PG&E).^{3,4} The Posting should be adjusted to reflect the posted as-delivered capacity price (\$69.93) in effect when Decision 07-09-040 was adopted on September 20, 2007 and should remain in place until the Decision is fully implemented.⁵

PG&E's Posting is contrary to the directives of Decision 07-09-040. Moreover, the premature and unauthorized posting significantly exacerbates already prejudicial pricing for firm delivery QFs. The Commission has been asked on several occasions to protect QFs from the piecemeal implementation of its QF policy decision. The prejudice to firm capacity resources currently "trapped" by Commission dictated regulations offering only as-available contracts and pricing is an issue the Commission can no longer avoid. PG&E's premature posting of revised as-available pricing, without simultaneously having firm capacity contracts and pricing available, must be precluded by the Commission. However, there is an alternative solution to the problems created by PG&E's actions. That is to allow firm capacity contract holders whose contracts have previously expired to reinstate firm capacity contract terms with firm capacity

³ The Motion is brought pursuant to Rule 11 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission). On January 31, 2008, CAC/EPUC filed a Protest to PG&E's 2008 Avoided Cost Posting which was not accepted by the docket office. Parties to avoided cost proceedings have been submitting protests of utility avoided cost price postings for many years and this should remain a viable option for bringing inappropriate or incorrect postings to the Commission's attention. However, pursuant to Energy Division and ALJ direction, CAC/EPUC submits this Motion.

⁴ PG&E's posting of 2008 as-delivered capacity prices (Posting) that is the subject of this Motion may be found at the following website. The prices were posted in January of 2008 and are in effect for the calendar year (January 2008 Avoided Cost Posting): http://www.pge.com/includes/docs/pdfs/suppliers_purchasing/qualifying_facilities/prices/2008_as_delcap.pdf

⁵ http://www.pge.com/includes/docs/pdfs/b2b/qualifyingfacilities/prices/2007_asdelcap.pdf

pricing. This remedy would exist until the Commission completes its process of establishing new firm capacity standard offer contracts consistent with its Decision.

The Commission's implementation of its Prospective QF Program contemplates the availability of both revised capacity and energy pricing and the availability of both as-available and firm capacity standard offer contracts. The Commission must reject PG&E's Posting until the entirety of the Commission's Prospective QF Program can be implemented.

I. Decision 07-09-040 Expressly States That Firm Capacity Is More Valuable Than As-Available Capacity And Therefore, Firm Power And As-Available Power "Cannot Be Priced Identically."

Decision 07-09-040 states that "firm, unit-contingent capacity is more valuable than as-available capacity because, it is much more predictable and, therefore, much more reliable." (Decision at 92) Based upon this determination, the Decision states that "firm power and as-available power cannot be priced identically." (Id.) Accordingly, the Decision provides that firm capacity payments will be \$91.97 kW-year⁶ while the payment for as-available capacity will initially be \$32.53 kW-year, subject to annual adjustments. PG&E's as-delivered capacity price for QFs derived in accordance with D 07-09-040 effective January 1, 2008, is \$35.87 kW-year. As stated in the Decision, the higher capacity

⁶ Based on the MPR model in Resolution E-4049 using a 10 year contract term, less the value of savings gained from inframarginal rents

payments associated with firm capacity appropriately compensate the QFs for the increased hedge value of assuring firm capacity for a longer term.⁷

Despite the Commission's directive, PG&E has not taken into account the firm capacity QFs in its service territory that are providing power under inapplicable and prejudicial as-available contract terms and pricing. CAC/EPUC members have approximately six projects, with total capacity of less than 150MW that fall into this category. These PG&E service territory firm delivery QFs have provided firm capacity and energy to PG&E for decades under firm power contracts which expired and were amended to SO1 contracts pursuant to D 05-12-009. These QFs continue to make firm capacity deliveries today. Prior Commission decisions, however, did not timely address firm capacity contract options, and let the utilities offer only as-available contracts as a "bridge" to the future. Unfortunately, that future has been long delayed and prejudice to these projects has been the result.

To allow PG&E to proceed now with its Posting and revision to lower as-available capacity prices only compounds the prejudice to these firm resources. They have waited patiently for the Commission to establish a firm contract option in Decision 07-09-040. As they wait ever longer, the price for their firm capacity will be dramatically reduced again without Commission intervention.

A firm capacity contract and pricing option was not made available by the Commission by the time of the firm delivery QFs' contract expiration. As a result the only option was to accept PG&E's as-available capacity and energy pricing.

⁷ The Decision expressly states that "[t]he contract terms and pricing in this decision apply specifically to expired, expiring and new QF contracts." (Decision at 9)

This is already plainly inconsistent with the Decision's determination that firm power and as-available power cannot be priced identically. During the period from the firm QF's contract expiration until today, PG&E continues to accept this "more valuable," "more predictable," and "more reliable" capacity while paying the as-available capacity pricing. That lower price is reserved for less valuable, less predictable and less reliable power.

Not content to accept this unwarranted benefit, PG&E, through its Posting seeks to dramatically increase the prejudice to these firm delivery QFs. The premature PG&E posting would cut the as-available capacity price almost in half from \$69.93 kW-year to \$35.87 kW-year. PG&E selectively chooses to implement this piecemeal pricing portion of the Decision while ignoring the Commission's express determination that firm delivery QFs should be paid a price of \$91.97 kW-year. PG&E's Posting is contrary to the directives of Decision 07-09-040 and must be rejected by the Commission.

II. Nothing In Decision 07-09-040 Mandates A Posting Of As-Available Capacity Pricing Prior To Complete Implementation Of The Commission's Prospective QF Program.

Nothing in Decision 07-09-040 mandates a posting of revised as-available capacity pricing for January 1, 2008. This fact is evident by PG&E's Posting and the lack of a revised posting by any other utility. Decision 07-09-040 was issued on September 25, 2007. PG&E arbitrarily decided to make its posting effective January 1, 2008. Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E) have not revised their as-available capacity pricing. Decision 07-09-040 did not establish a separate deadline for the posting

of as-available capacity pricing because, as the Decision makes evident, the Commission's Prospective QF Program was intended to be implemented as a coherent whole. (Decision at 2-3)

The Commission's orders to the utilities are clear. The utilities "*shall revise their QF programs, including the short-run avoided cost (SRAC) calculations and the implementation of their Prospective QF program, in conformance with the discussion, findings, and conclusions set forth in this decision....*" (Ordering paragraph 1)(Emphasis supplied) The Commission's Prospective QF Program provides an integrated and interdependent set of features that include: (a) SRAC energy payments; (b) payments for as-available capacity; (c) short term as-available contracts; and, (d) longer term firm capacity pricing and contracts. The Decision ties revised pricing to the contracts available under the Prospective QF Program. The Decision does not separate out pricing, in particular as-available capacity pricing, as a term that must be implemented prior to or separate from the rest of the Prospective QF Program. (Decision at 2-3).

There is no basis for PG&E to prematurely post revised as-available capacity pricing in advance of or separate from implementation of the whole of the Commission's Prospective QF Program. PG&E's Posting should be rejected for this reason as well.

III. Non-Cohesive Implementation Of Policy And Pricing Permits Incentives Against The Successful Initiation Of The Prospective QF Program Made Evident By The PG&E Posting.

Existing QFs with expired and expiring contracts have been waiting for a long-term Commission QF policy since as early as 2002. Because of the Commission's desire to have existing QFs stay on-line, it provided interim relief to QFs that had contracts expiring during the period in which the Commission was working to establish its QF policy and contract options. Believing in 2002 that development of its QF policy was imminent, the Commission provided interim relief, in the form of an SO1 Contract (i.e., an "As-available Contract"), for QFs with contracts set to expire before January 1, 2004, or already expired. (D.02-08-071 at 32) In D.03-12-062, the Commission extended the interim relief from D.02-08-071 to contracts set to expire before January 1, 2005. In D.04-01-050, the Commission continued the interim SO1 contract treatment for QF contracts expiring before January 1, 2006. In D.05-12-009, the Commission extended the interim relief provided to expiring QFs contracts "from January 1, 2006 until the Commission issues a final decision in the combined two dockets, Rulemaking (R.) 04-04-003 and R.04-04-025.

Because no other viable options were available and believing that development of a long-term QF policy was in fact imminent, certain firm resources with expired or expiring QF contracts accepted a form of interim relief. This resulted in firm resources, which have reliably delivered firm capacity and energy to the utilities (in particular PG&E) for decades, being compensated at as-available rates.

As discussed above, if PG&E's Posting is not rejected, firm delivery resources performing under interim as-available agreements would experience an immediate and dramatic reduction in already discounted capacity and energy payments. This would occur since long term contract options are not yet available to these QFs. While the utilities submitted their proposed contracts on January 14, 2008, review of those contracts at Commission scheduled workshops and subsequent meetings of the parties indicates that the parties are not aligned on critical issues. Under such a circumstance, existing firm QFs, though theoretically eligible for long run avoided cost (LRAC) pricing options under the Prospective QF Program, would not be able to receive that pricing. The QF would be immediately confronted with the operational consequences associated with a pricing revision without the option of seeking an alternative, yet-to-be-established LRAC contract. While the Prospective QF Program in theory provides the QF with a Commission-sanctioned alternative, this option would not actually be available to the QF if revised pricing is allowed to be implemented before the new standard offer contracts are available.

IV. A Reasonable Option Is Available

CAC/EPUC proposed, and the Commission Decision adopted, a recommendation to allow firm capacity contract suppliers whose contracts had terminated to reinstate the non-price terms of the expired firm contracts. This option would be available until the Commission completed its implementation of the QF policy decision, and particularly the establishment of firm capacity contracts.

In recognition of the often lengthy process involved in negotiating contract terms, we will adopt CAC/EPUC's recommendation for existing firm capacity QF resources whose contracts expire before the contracts required by this decision are available...D.07-09-040, p. 126.⁸

While the decision appears to have adopted this proposal, the utilities have not embraced it and the Energy Division has not supported its implementation to date. However, this option provides a solution to the issues presented by PG&E's desire to immediately implement as-available capacity pricing for as-available capacity projects, while eliminating the prejudice to firm capacity suppliers.

V. CONCLUSION

Non-cohesive implementation of policy and pricing could provide the very type of incentive against the successful initiation of the Prospective QF Program made evident by the PG&E Posting. If there is an interim period during which QFs are denied access to contractual and pricing terms commensurate with firm power deliveries, or compelled to modify operations, unfair advantage could be taken. During this period there may not be any strong impetus to expeditiously develop the contractual and pricing alternatives provided by the Prospective QF Program at the same time that ever lower prices are imposed on existing firm supply resources.

⁸ The CAC/EPUC proposal was presented in comments on the proposed decision from the Commission, and sought the following order:

For firm CHP QF resources whose contract terminated during or reasonably before this lengthy proceeding the QF may revert/reinstate the non-price terms and conditions of the previously expired firm capacity contract until the final SO contract is adopted;

For firm capacity CHP QF resources whose contract terminates before the SO contract is adopted, the QF may retain the non-price terms and conditions of the terminating firm capacity contract until the final SO contract is adopted.

Contemporaneous implementation of all aspects of the Prospective QF Program and the Decision's revised pricing would provide the appropriate balance for all parties. This would be consistent with prior Commission determinations that certain standard offer contracts or contract provisions taken as a whole are reasonable and that such balances should not be carelessly disturbed.⁹ Availability of the contract options must necessarily include the establishment of the standard offer terms, the execution, approval by the Commission and implementation of the new contract. Accordingly, the Commission should require that all of the features of the Decision, including a reasonable transition period of at least 30 days, be available before any portion of the Decision is implemented. Failure to adopt this requirement would provide distorted incentives to utility parties, and support gaming in the development of the Prospective QF Program.

⁹ See, *Re Pacific Gas and Electric Company*, D.89-04-047, 31 CPUC.2d 458 (1989); *Re Pacific Gas and Electric Company*, D.92-01-014, 43 CPUC.2d 2 (1992) (publication page references unavailable)

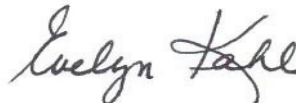
Alternatively, this motion offers a solution that the Commission could readily implement. This solution would permit the as-available capacity pricing in PG&E's posting to go forward, but only for projects that are as-available capacity suppliers. Those relatively few projects that are firm capacity resources who were subject to limited options in the past would now be able to provide firm capacity under reasonably applicable contract terms and updated firm capacity pricing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Alcantar", with a long horizontal flourish extending to the right.

Michael Alcantar
Rod Aoki

Counsel to the Cogeneration
Association of California

A handwritten signature in black ink, appearing to read "Evelyn Kahl", with a long horizontal flourish extending to the right.

Evelyn Kahl
Nora Sheriff

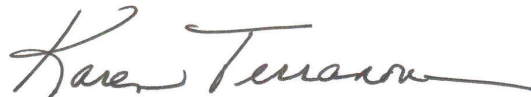
Counsel to the Energy Producers
and Users Coalition

March 3, 2008

CERTIFICATE OF SERVICE

I, Karen Terranova hereby certify that I have on this date caused the attached **The Cogeneration Association Of California And The Energy Producers And Users Coalition's Motion To Adjust January 2008 Avoided Cost Posting Of Pacific Gas And Electric Company** in R.04-04-003/R04-04-025 to be served to all known parties by either United States mail or electronic mail, to each party named in the official attached service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated March 3, 2008, at San Francisco, California.

A handwritten signature in dark ink, appearing to read "Karen Terranova", with a long horizontal flourish extending to the right.

Karen Terranova

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